

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

FILED: JUNE 3, 2009

VICTOR MITKAL and)	09CV3355
MARY ANNE MITKAL,)	JUDGE DOW JR.
)	MAGISTRATE JUDGE SCHENKIER
Plaintiffs,)	AO
)	Case No.
v.)	
)	
UNITED PARCEL SERVICE CO.,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendant, United Parcel Service, Inc. (hereinafter, "UPS"), by its attorneys, Scott C. Bentivenga and Ronitha D. Maharaj, and pursuant to 28 U.S.C. §1441, 28 U.S.C. §1446 and 28 U.S.C. § 1332, hereby files its Notice of Removal of this cause to the United States District Court for the Northern District of Illinois, from the Circuit Court of Cook County, Illinois, and respectfully states:

1. On May 4, 2009, Plaintiffs Victor Mitkal and Mary Anne Mitkal filed an action in the Circuit Court of Cook County, Illinois, entitled Victor Mitkal and Mary Anne Mitkal v. United Parcel Service Co., Case No. 2009L005271. Defendant in said action now files this Notice of Removal. Upon receiving a file-marked copy hereof, Defendant will serve this Notice of Removal upon the other parties thereto and file a copy of this Notice of Removal with the Clerk of the Circuit Court of Cook County, Illinois.

2. Defendant, UPS, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Georgia.

3. Plaintiffs are residents of the State of Illinois. They reside at 8563 W. St. Joseph Avenue, Chicago, Illinois 60656.

4. Plaintiffs commenced this cause of action on May 4, 2009, by filing their Complaint and having a summons issued thereon. A summons and copy of the Complaint were served on this Defendant on May 8, 2009. Copies of the Summons and Complaint are attached hereto as Exhibit A.

5. The Complaint alleges that the Plaintiff, Victor Mitkal, was a pedestrian on Interstate 65 near its intersection with Interstate 33 in Boone County, Worth Township, Indiana. Plaintiff, Mary Anne Mitkal was a passenger in vehicle parked along I-65. Plaintiffs allege that Defendant, through its employee/agent, negligently drove its vehicle into the vehicle occupied by Plaintiff Mary Anne Mitkal and this collision caused said vehicle to strike Plaintiff, Victor Mitkal.

6. It is clear that the amount in controversy in this cause exceeds \$75,000.00. Plaintiffs allege that both Victor and Mary Anne Mitkal were “injured both internally and externally; suffered multiple injuries including fractures, dislocations which required expensive medical treatment including surgery; had to expend large sums of money in endeavoring to be cured of their injuries, had to absent themselves from their usual duties, all to their financial detriment; that the injuries sustained are permanent.” *See* Plaintiffs’ Complaint, Count I ¶ 5, Count II ¶ 5. Further, Plaintiff, Mary Anne Mitkal maintains a claim for loss of consortium related to Victor Mitkal’s injuries. Plaintiffs filed their Complaint in the Law Division of the Circuit Court of Cook County, Illinois, which has a minimum jurisdictional limit of \$50,000.00 for the amount in controversy.

7. Because this controversy is entirely between citizens of different states and the amount in controversy exceeds \$75,000.00, this Defendant desires to remove said cause from the Circuit Court of Cook County, Illinois to the United States District Court for the Northern District of Illinois based on diversity jurisdiction.

8. Copies of Defendant's Appearance and Jury Demand and Motion to Extend Time to Respond that have been filed with the Circuit Court of Cook County, Illinois are attached as group Exhibit B.

9. Defendant has served a copy of this Notice of Removal on all counsel of record and has filed a copy additionally with the Clerk of the Circuit Court of Cook County, Illinois.

WHEREFORE, Defendant, UNITED PARCEL SERVICE, INC., respectfully requests that this case proceed before the United States District Court for the Northern District of Illinois as an action properly removed.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

s/ **Scott C. Bentivenga**

By: One of Its Attorneys

Scott C. Bentivenga
Ronitha D. Maharaj
LEWIS BRISBOIS BISGAARD & SMITH LLP
550 West Adams Street, Suite 300
Chicago, Illinois 60661
(312) 345-1718

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed by first class United States Mail this 3rd day of June, 2009, to:

Dominic R. Fichera
FICHERA & MILLER
415 North LaSalle Street, Suite 301
Chicago, IL 606054

s/ Scott C. Bentivenga

2120 - Served
2220 - Not Served
2320 - Served By Mail
2420 - Served by Publication
SUMMONS

SUMMONS

2121 - Served
2221 - Not Served
2321 - Served by Mail
2421 - Served by Publication

(Rev. 8/9/96) CCG-0001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, LAW DIVISION 2009L005271

CALENDAR/ROOM A

TIME 00:00

PI Motor Vehicle

VICTOR MITKAL and
MARY ANNE MITKAL,

Plaintiffs,

No.:

v.

UNITED PARCEL SERVICE CO.,
a Delaware Corporation,

Defendants.

PLEASE SERVE:

United Parcel Service Co.
R/A Illinois Corporation Service Co.
801 Adlai Stevenson Drive
Springfield, IL 62703

SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the office of the Clerk of this Court (located in the Richard J. Daley Center, Room* 801, Chicago, Illinois 60602) within 30 days after service of this summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

WITNESS, MAY 04 2009

Dorothy Brown

Clerk of Circuit Court

FICHERA & MILLER
Attorney for the Plaintiff
Address: 415 North LaSalle St., Suite 301
City/Zip: Chicago, Illinois 60654
Telephone: (312) 673-2222
Atty. No.: 40783

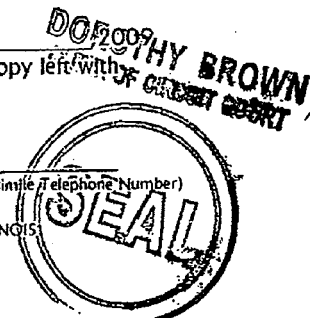
Date of service: _____
(To be inserted by officer of copy left with
defendant or other person)

**Service by Facsimile Transmission will be accepted at: _____

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

*Law Division Room 801
Chancery Divorce Room 802
County Division Room 1202
Probate Division Room 1202



IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

VICTOR MITKAL and
MARY ANNE MITKAL,

Plaintiffs,

v.

UNITED PARCEL SERVICE CO.,
a Delaware Corporation,

Defendants.

No.

2009L005271
CALENDAR/ROOM A
TIME 00:00
PI Motor Vehicle

COMPLAINT AT LAW

COUNT I
Negligence

NOW COMES the Plaintiff, VICTOR MITKAL, by and through his attorneys, RICHARA & MILLER, and complaining of the Defendant, UNITED PARCEL SERVICE CO., a Delaware Corporation, alleges the following:

1. That on or about February 3, 2009, the Plaintiff, VICTOR MITKAL, was a pedestrian on Route I-65S, near its intersection with I-33, in Boone County, Worth Township, State of Indiana.
2. That at said time and place, the Defendant, UNITED PARCEL SERVICE CO., by and through its employee/agent and servant, JUAN A. HOWARD, was operating a truck in the southerly direction on Route I-65, at said location in said County and State.
3. That the Defendant, UNITED PARCEL SERVICE CO., by and through its employee/agent, JUAN A. HOWARD, drove said vehicle in such a careless and negligent manner as to cause the vehicle to collide with the vehicle then being parked in the roadway causing said vehicle to strike the Plaintiffs, causing the injuries as hereinafter more fully set forth.
4. That the Defendant, UNITED PARCEL SERVICE CO., by and through its employee/agent JUAN A. HOWARD, was guilty of one or more or all of the following careless and

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CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION

negligent acts or omissions:

- a. Drove said vehicle at a high and dangerous speed contrary to the laws as made and provided;
- b. Failed to keep a proper lookout for vehicles in the roadway contrary to the laws as made and provided;
- c. Failed to stop the vehicle when danger to the plaintiffs was evident contrary to the laws as made and provided;
- d. Drove said vehicle at a speed that was unsafe for the condition existing at the time in violation of the laws as made and provided;
- e. Failed to keep proper control of the motor vehicle contrary to the laws as made and provided;
- f. Failed to properly equip said vehicle with sufficient brakes contrary to laws as made and provided; and
- g. Was otherwise careless and negligent in the operation and control of the motor vehicle.

5. As a proximate result of one or more or all of the foregoing acts of negligence, the Plaintiff, VICTOR MITKAL was injured both internally and externally; suffered multiple injuries including fractures, dislocations which required expensive medical treatment including surgery; had to expend large sums of money in endeavoring to be cured of his injuries, had to absent themselves from his usual duties, all to his financial detriment; that the injuries sustained are permanent.

WHEREFORE, the Plaintiff VICTOR MITKAL seeks judgment against the Defendant, UNITED PARCEL SERVICE CO. in such sum of money in excess of Fifty Thousand Dollars in fair and just compensation.

COUNT II
Negligence

NOW COMES the Plaintiff, MARY ANNE MITKAL, by and through her attorneys, FICHERA & MILLER, and complaining of the Defendant, UNITED PARCEL SERVICE CO., a Delaware Corporation, alleges the following:

1. That on or about February 3, 2009, the Plaintiff, MARY ANNE MITKAL, was a passenger in a vehicle which was parked on Route I-65S, near its intersection with I-33, in Boone

County, Worth Township, State of Indiana.

2. That at said time and place, the Defendant, UNITED PARCEL SERVICE CO., by and through its employee/agent and servant, JUAN A. HOWARD, was operating a truck in the southerly direction on Route I-65, at said location, in said County and State.

3. That the Defendant, UNITED PARCEL SERVICE CO., by and through their employee/agent, JUAN A. HOWARD, drove said vehicle in such a careless and negligent manner as to cause his vehicle to collide with the vehicle then being occupied by the plaintiff MARY ANNE MITKAL, causing the injuries as hereinafter more fully set forth.

4. That the Defendant, UNITED PARCEL SERVICE CO., by and through its employee/agent JUAN A. HOWARD, was guilty of one or more or all of the following careless and negligent acts or omissions:

- h. Drove said vehicle at a high and dangerous speed contrary to the laws as made and provided;
- b. Failed to keep a proper lookout for vehicles in the roadway contrary to the laws as made and provided;
- c. Failed to stop the vehicle when danger to the plaintiffs was evident contrary to the laws as made and provided;
- d. Drove the motor vehicle at a speed that was unsafe for the condition existing at the time in violation of the laws as made and provided;
- e. Failed to keep proper control of the motor vehicle contrary to the laws as made and provided;
- f. Failed to properly equip said vehicle with sufficient brakes contrary to laws as made and provided; and
- g. Was otherwise careless and negligent in the operation and control of the motor vehicle.

5. As a proximate result of one or more or all of the foregoing acts of negligence, the Plaintiff, MARY ANNE MITKAL, was injured both internally and externally; suffered multiple injuries including fractures, dislocations which required expensive medical treatment; had to expend large sums of money in endeavoring to be cured of her injuries, had to absent herself from her usual duties, all to her financial detriment; that the injuries sustained are permanent.

WHEREFORE, the Plaintiff, MARY ANNE MITKAL, seeks judgment against the Defendant, UNITED PARCEL SERVICE CO. in such sum of money in excess of Fifty Thousand Dollars in fair and just compensation.

COUNT III
(Loss of Consortium)

NOW COMES the Plaintiff, MARY ANNE MITKAL, by and through her attorneys, FICHERA & MILLER, and complaining of the Defendant, UNITED PARCEL SERVICE CO., a Delaware Corporation, alleges as follows:

1-5. The Plaintiff reasserts and realleges the allegations contained in Paragraphs 1 through 5 of Count I as and for Paragraphs 1 through 5 of Count III as if fully restated herein.

6. That at all times relevant herein, VICTOR MITKAL, was the lawfully wedded husband of MARY ANNE MITKAL.

7. As a proximate result of one or more or all of the foregoing acts of negligence, MARY ANNE MITKAL did suffer loss of the society, companionship and support of her husband, VICTOR MITKAL.

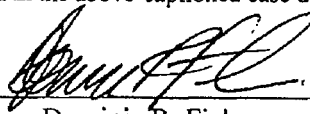
WHEREFORE, the Plaintiff, MARY ANNE MITKAL, seeks judgement against the Defendant, UNITED PARCEL SERVICE CO. in such sum of money in excess of Fifty Thousand Dollars in fair and just compensation.

FICHERA & MILLER

BY: 

One of the Attorneys for the Plaintiffs

I, Dominic R. Fichera, an attorney for the plaintiff in the above-captioned case depose and state that the damages sought to this action do exceed \$50,000.00.



Dominic R. Fichera

FICHERA & MILLER
Attorneys for the Plaintiffs
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